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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/150526

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 09, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on August 14, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee Early Care Administration (the agency) correctly determined that Petitioner was overpaid child care benefits in the amount of \$1566.04 for the period of April 29, 2012 to October 31, 2012.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Tamika Terrell, Child Care Subsidy Specialist  
Milwaukee Early Care Administration - MECA  
Department of Children And Families  
1220 W. Vliet St. 2nd Floor, 200 East  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On May 30, 2013, the agency sent Petitioner a Child Care Overpayment Notification for claim number [REDACTED] indicating that she had been overpaid child care benefits in the amount of \$1566.04 for the period of April 29, 2012 to October 31, 2012. (Exhibit 2, pg. 15)

3. The petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 6, 2013. (Exhibit 1)

### DISCUSSION

The county agency is legally required to seek recovery of all overpayments of child care benefits. An overpayment occurs when a recipient is not eligible to receive child care benefits or receives more benefits than he/she is entitled to receive. Wis. Stat. § 49.195(3) provides that the department shall determine whether an overpayment has occurred, shall notify the recipient, and shall give the recipient an opportunity for a review and hearing. Wis. Stat. § 49.195(3) See also *Wisconsin Shares Child Care Assistance Manual (Child Care Manual)*, §2.1.5.1 “All overpayments made to a client, whether due to client error, agency error or fraud, **must** be formally established to be repaid by the client.” *Child Care Manual* §2.1.5.2.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving recoupment of an alleged overpayment, the agency is the moving party, seeking to change the status quo. As such, the agency bears the burden to prove that it acted correctly.

A parent/caregiver is eligible for child care services if he/she needs child care to work in an approved activity. *Child Care Manual*, §§ 1.5.0, et al., & 1.4.8. One type of approved activity is “Work in a Wisconsin Works employment position, including participating in job search, orientation and training activities under unsubsidized employment, and in education or training activities for trial jobs, community service jobs, or transitional placements...” *Child Care Manual*, §1.5.4

It is the agency’s position, that Petitioner was overpaid child care benefits between April 29, 2012 and October 31, 2012, because she used state subsidized child care, but did not participate in an employment search as required by the W-2 programs and because she did not participate in the work experience/community service job to which she was assigned by her W-2 case manager.

Petitioner contested the agency’s assertion that she did not participate in an employment search, stating that she turned in her log every week during the time in question. Petitioner also contests the agency’s assertion that she did not participate in her assigned work experience.

With regard to participation in assigned work experience, it is undisputed that Petitioner’s W-2 payments were reduced every month from April 2012 to November 2012 and for January and February 2013, because she missed hours for her community service job/work experience. (Exhibit 2, pgs. 85-95; Testimony of Petitioner) Petitioner asserts that she did call her W-2 case manager as directed in the notices, but did not dispute the fact that she did not request a W-2 Fact Finding or otherwise appeal the reduction of her benefits.

The fact that Petitioner’s W-2 case manager might have been negligent in performing her job duties does not constitute a compelling reason for Petitioner’s failure to contest the reductions of her benefits, because the notices that were sent to Petitioner advising her of the reduction of her benefits, clearly stated that she had 45 days in which to request a Fact Finding proceeding and to contact the case worker named in the notice. (Exhibit 2, pgs. 85-95) Further, the reductions in Petitioner’s benefits were not insignificant. Indeed, all but one of the ten reductions ranged from \$160.00 to \$450.00, with an average deduction of \$329.44 per month. One would think Petitioner would have been pursuing an appeal, if she was attending her assigned work experience as required, but not getting paid. Consequently, a negative inference may be drawn from Petitioner’s failure to contest the reduction of her benefits and it is found that Petitioner did, in fact, miss the assigned work during the time in question.

With regard to the job search requirement, Petitioner testified that she did turn in her job logs every week. However, Petitioner’s testimony was not entirely credible. The agency provided a Non-Participation History Listing and Case Comments (Exhibit 2, pgs. 56-82 and pgs. 95-152) which document Petitioner’s failure to complete weekly job searches as required. In particular, the Case Comments note both, the times when Petitioner did submit her weekly job logs and the times when she did not. Thus, in the absence of evidence to

corroborate Petitioner's claim that she completed job logs every week, it is found that she did not, in fact, do so.

### **CONCLUSIONS OF LAW**

The agency correctly determined that Petitioner was overpaid child care benefits from April 2012 through October 2012, because she did not participate in her assigned work experience and because she did not comply with the W-2 program's job search requirements.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

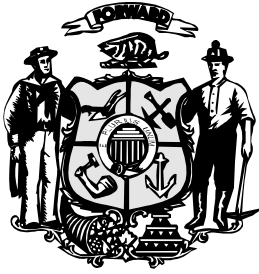
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 9th day of October, 2013.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 9, 2013.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud